

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:) CASE NO: 21-30071-HCM
) CHAPTER 11
)
THE GATEWAY VENTURES, LLC,) El Paso, Texas
)
) Thursday, January 13, 2022
Debtor.)
) 11:12 a.m. to 12:14 p.m.

HEARING RE:

EMERGENCY MOTION TO ENFORCE THE CHAPTER 11 PLAN,
AND AWARD OTHER MISCELLANEOUS RELIEF [DKT.NO.262]

EMERGENCY MOTION TO ENFORCE THE CHAPTER 11 PLAN [DKT.NO.265]

BEFORE THE HONORABLE H. CHRISTOPHER MOTT,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: See page 2

Court Recorder [ECRO]: Bobby Yarbrough

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1 El Paso, Texas; Thursday, January 13, 2022; 11:12 a.m.

2 **(Call to Order)**

3 **THE COURT:** We're on to the sixth case on the docket,
4 which is the Gateway Ventures, LLC. It's Chapter 11 case 21-
5 30071. We have two motions set today. We have an emergency
6 motion to enforce first amended plan filed by the I'll call
7 them the Noorani parties.

8 And then, second, we have an emergency motion to
9 enforce first amended plan filed by the I'll call them the
10 Westar parties.

11 So why don't we start by getting appearances for the
12 record. So, Mr. Carruth, did you want to appear?

13 **MR. CARRUTH:** Thank you, Your Honor. Jeff Carruth on
14 behalf of the reorganized debtor.

15 **THE COURT:** Very good. Let's see, Mr. Feuille, did
16 you want to appear?

17 **MR. FEUILLE:** Good morning, Your Honor. James
18 Feuille on behalf of the Noorani parties.

19 **THE COURT:** Very good. Mr. Nevarez, did you want to
20 appear?

21 **MR. NEVAREZ:** Yes, Your Honor. Michael Nevarez for
22 Westar Investors Group, LLC, Mr. Suhail Bawa, and Saleem Makowi
23 (sic).

24 **THE COURT:** Thank you. Let's see, Mr. Davis, did you
25 want to appear?

1 **MR. DAVIS:** Yes, thank you, Your Honor. Harrel Davis
2 on behalf of Sam Kumar.

3 **THE COURT:** Let's see, who else do we have? Anybody
4 else want to appear in the Gateway Ventures case?

5 **MR. LOPEZ:** Your Honor, this is Aldo Lopez. I'm just
6 observing today.

7 **THE COURT:** Very good. Thank you. Anyone else want
8 to appear in the Gateway Ventures case?

9 (No audible response)

10 All right. So, yes, I've read the motions and
11 responses and replies. And I want to hear from Mr. Carruth
12 first on (indisc.) and then I'll hear from others.

13 **MR. CARRUTH:** Thank you, Your Honor. We have been
14 going back and forth with -- first, let me address the Noorani
15 situation and lot nine. We have been in the last seven to ten
16 days drilling down on some final details, particularly with
17 respect to parking.

18 There was an original document or agreement that
19 there would be a withdrawal from the CCNRs on the property,
20 requires some (indisc.) some other problems or some other
21 issues with parking and whatnot. But nonetheless we continue
22 to work through those.

23 I believe Mr. Feuille and I have communicated this
24 morning and today. And I believe with respect to the Noorani
25 and lot nine piece of this, we would ask the Court to reset

1 that hearing -- or Mr. Feuille has consented to continuing that
2 piece of this matter to a hearing date that would be available.

3 And, Mr. Feuille, correct me if I'm wrong, we said
4 seven to ten days out.

5 **MR. FEUILLE:** That's correct.

6 **MR. CARRUTH:** And, Your Honor, in fact we have
7 another conference call scheduled with some (indisc.) lawyers
8 at ScottHulse, and then Mr. Feuille and I this afternoon to try
9 to finalize this.

10 And then with respect to the (indisc.) --

11 **THE COURT:** Hold on (indisc.) --

12 **MR. CARRUTH:** I'm sorry.

13 **THE COURT:** -- just a second. I'm making sure --
14 okay. So it was lot nine to Noorani and lot seven to Westar,
15 right?

16 **MR. CARRUTH:** Yes, sir.

17 **THE COURT:** Okay. All right. So go ahead and tell
18 me where you are on Westar. Go ahead.

19 **MR. CARRUTH:** Thank you. We simultaneously as we
20 sort of worked through the closing details and pieces with lot
21 nine, we have been proceeding with respect to lot seven as
22 well. I conferred with Mr. Dixon this morning and we believe
23 that we can complete that conveyance within the -- a similar
24 seven to ten-day timeframe to fulfill that.

25 That's less complicated because there's not a

1 withdrawal from the CCNRs. So that is more just a
2 straightforward release and conveyance situation.

3 **THE COURT:** And why would that take another seven to
4 ten days?

5 **MR. CARRUTH:** Because we are -- I guess the other
6 piece of this is we're also still trying to get final payoffs
7 and releases from Home Tax and so we have gotten -- we have
8 received that from lot nine. And we are awaiting that on lot
9 seven as well at this point. But it could happen --

10 **THE COURT:** (Indisc.)

11 **MR. CARRUTH:** I'm sorry.

12 **THE COURT:** Final payments and releases from who?

13 **MR. CARRUTH:** Home Tax Solutions.

14 **THE COURT:** Oh, Home Tax, okay.

15 **MR. CARRUTH:** Yes. So -- and this may be more
16 detailed than folks want, but at some point we moved away from
17 the individual who we were dealing with and who was essentially
18 a sales person, and so now we're in their servicing department
19 and working through -- we found the right humans to deal with
20 within Home Tax shortly before the holidays. So we're trying
21 to work through that as well.

22 But very shortly, within the same timeframe, we
23 believe that the lot seven conveyance can be completed as well.

24 **THE COURT:** Well, so was my memory wrong, but I
25 thought Home Tax had agreed to partial release prices on lot

1 seven and lot nine.

2 **MR. CARRUTH:** Your Honor, they had, and that was part
3 of the difficulty of the sales side saying, yes, we will, and
4 then effectuating the precise payoff amounts or -- and
5 processing the releases on the servicing side. But, yes, the
6 legal mechanism is in place.

7 The functional mechanism to reach a closing has been
8 the hang-up. But it -- we -- be that as it may, we believe we
9 are very close to the finish line on lot seven as well, on that
10 closing.

11 **THE COURT:** And then what about the payment of a
12 hundred thousand dollars to Westar?

13 **MR. CARRUTH:** Your Honor, that piece is not -- that
14 may take some additional time. We did not -- we're not able to
15 achieve a closing on another lot or obtain additional financing
16 as anticipated.

17 In November and December, the -- as we've discussed,
18 the -- you know, one of the issues on a subsequent closing was
19 the continued presence of the lis pendens. In November, I
20 remember, in fact, on the morning of November 9th having a call
21 with a title examiner or a underwriter with our prospective
22 lender who said, what -- why is this lis pendens still there,
23 what is about that.

24 As I've gone through this process, it seems the lis
25 pendens is -- was -- is or was more of a problem or red flag in

1 closing subsequent transactions or dealing with counterparties
2 because that's more of an unknown. The Noorani abstract of
3 judgment, that's a known, quantifiable interest or encumbrance
4 against the property. The lis pendens raises flags because it
5 has the appearance of being open-ended.

6 And so -- and, frankly, we think that, you know,
7 there's frankly been some damages that, you know, would
8 possibly be outside of the plan with respect to the interest
9 carry and additional charges that we've had to incur to get the
10 lis pendens released.

11 But be that as it may, Gateway does not have that
12 money today. Gateway is working on other transactions to
13 complete that payment.

14 The -- and I was trying to get back to the plan
15 before I began to speak. I don't recall off the top of my head
16 the enforcement mechanism because of the changes. But, you
17 know, that is an obligation that Gateway obligated itself to in
18 the plan and that is going to require more time to make the
19 payments because we have been unable to complete other
20 transactions.

21 **THE COURT:** So when was this release of lis pendens
22 actually recorded? Was that on November 9th?

23 **MR. CARRUTH:** Your Honor, I -- so I went back and
24 looked this morning. That release was on -- so the timeline
25 was October the 15th was when the confirmation order was

1 entered which directed the release of the lis pendens.

2 The effective date of the plan was October the 18th.

3 The lis pendens release was transmitted on November the 2nd.

4 The record date was November the 4th. We had our status
5 conference on the 9th, and that seems to be the first day that
6 it was visible in the county records. But it does have a
7 November 4 record date.

8 But I know that kind of the whole, as we explained in
9 our response, the whole timeline that we envision to exit
10 bankruptcy has been shifted and disrupted. We're close to
11 completing the main two transactions that would free up the
12 property, which would be the conveyance of lot seven and lot
13 nine, so that Mr. Dixon can complete and move on with the
14 development.

15 I think we've shifted -- Mr. Dixon has shifted focus
16 on a couple of things.

17 We may be able to revive a couple of things that were
18 not close or not received by one party or the other. But I --
19 at this point, we are pressing forward, trying to complete the
20 other transactions that the Court heard about at the
21 confirmation hearing in order to pay Legalist and to fund the
22 \$100,000 payment. And, frankly, and to pay taxes that are due
23 on January 31st.

24 **THE COURT:** Well, we're -- I mean, we're like two
25 months past November 4, November 9, and almost three months

1 past the effective date. You know, so there's already been a
2 pretty lengthy I'll say not an extension granted but an
3 extension borne by these creditors.

4 And then I remember specifically asking Mr. Dixon
5 when I'll just say the final agreement was reached with the
6 Westar parties about having the ability to pay that hundred
7 thousand within 45 days of the effective date, as well as other
8 plan obligations. And the answer I got was, yes, we can do
9 that.

10 And I'll just (indisc.) I'm not really buying the,
11 well, there was a delay and the release of the lis pendens. I
12 mean, I might buy that if it was a few days or something or a
13 week or something. But we're at two months plus.

14 And now what I hear you saying is, well, we can
15 probably get (indisc.) within seven to ten days but nobody
16 knows when we can pay them the hundred thousand.

17 **(Pause)**

18 **MR. CARRUTH:** Your Honor, I see Mr. Dixon has hopped
19 on. Perhaps I should -- I guess we can ask him to address the
20 Court or we could swear him in and I could do some testimony.
21 But I guess perhaps for efficiency maybe he could just address
22 the Court as to the timing of this -- of the hundred thousand
23 dollar payment.

24 **THE COURT:** That's fine with me. Mr. Dixon, did you
25 want to say something?

1 **MR. DIXON:** Yeah. I'd like to address the Court if I
2 just may have a couple of minutes, please. I think I could
3 provide some clarity to the overall situation and, you know,
4 hopefully (indisc.).

5 So I think what Mr. Carruth is saying about the lis
6 pendens being filed is part of it.

7 The other portion, the other part of it, is the
8 filing of the motion to enforce the plan prematurely without
9 having the time period past. Also (indisc.) refinance for the
10 entire project (indisc.) on because everybody's scared to death
11 of (indisc.) going to do because it's been so (indisc.) through
12 this entire process.

13 So that being the case, my (indisc.) is what will
14 business lenders who had a refinance in place for this
15 development, then a construction line of credit (indisc.)
16 construction of lot five, which was to consummate the deal with
17 Spectrum, who was also part -- went through this bankruptcy
18 process with us.

19 Then this -- then the filing of this motion to
20 enforce and everything (indisc.) basically stopped and halted
21 everything. So we've basically been just kind of treading
22 water for about 30 days.

23 As far as our ability to perform and provide the
24 transfer of the properties (indisc.) lot seven and lot nine
25 respectively. Lot nine needed (indisc.) Chicago Title Company

1 signed by me with a release from Legalist and Home Tax
2 Solutions since the 13th of December.

3 We've been trying to negotiate with Mr. Feuille and
4 his clients (indisc.) but basically a month out complete
5 renegotiation of a (indisc.) agreement which we had in August.
6 And I believe we're very close to having that done and
7 completed (indisc.) this afternoon it is my goal to have that
8 done.

9 And I'm prepared to close on the lot nine transaction
10 tomorrow morning. That's my goal is to have this closed
11 tomorrow.

12 Along with that I (indisc.) allocate funds to pay the
13 Home Tax bill to have that release taken care of.

14 And I'm going to also next week pay -- or in two
15 weeks go ahead and pay the entire tax bill for the (indisc.)
16 property, which is \$325,000.

17 In lot seven, we have (indisc.) lot seven is that we
18 also received a release from Legalist yesterday for release of
19 the property which would also then have a -- with this whole
20 thing (indisc.) trying to figure out what's going on with these
21 motions for enforcement and where they're at and try to make
22 sure they (indisc.) their staff (indisc.).

23 We received (indisc.) yesterday. I have the -- I
24 have meets and bounds and a "D" preferred, which I am signing
25 today and sending to John (Indisc.) Chicago Title in

1 preparation to record and transfer the lot to Westar Investors
2 for lot seven.

3 As part of that, there is a hundred thousand dollar
4 payment that's also due. I'm asking them to give me a couple
5 of weeks' extension (indisc.) on that hundred thousand dollar
6 payment and so I can make the tax payment to El Paso -- the
7 City of El Paso first and then issue a payment to them right
8 directly behind that.

9 I'm asking for this extension simply because The
10 Gateway Ventures has had a stall on its income and a stall on
11 its plan and has had (indisc.) stall in the refinance of the
12 entire project kind of caused by the continual behavior of
13 Westar Investors.

14 And I believe it's -- you know, I believe that I did
15 tell you, sir, in this court that I will make sure that I'm
16 good for this money. I'm good for the money.

17 But to date I haven't received a note payable from
18 Mr. Nevarez. I haven't received a confession of judgment. I
19 haven't received any documentation (indisc.) with regard to
20 this transaction as well. And I've been waiting.

21 I've been ready, willing, and able to close (indisc.)
22 property to transfer the assets to these -- to both of these
23 parties and (indisc.) for quite some time. I am ready to close
24 these transactions. I'm asking for a simple -- simply I'm
25 asking just for a small extension on the hundred thousand

1 dollar payment because it is being paid by me.

2 I have another obligation as you're aware, I have
3 another case in front of you right now which is (indisc.) which
4 is going to take additional collateral by myself to make sure
5 that that happens as well. So I have to (indisc.) so that Mike
6 Dixon doesn't go into Chapter 7 or Chapter 11 or whatever it is
7 personally.

8 And that's what I'm working on. I'm working within
9 (indisc.) boundaries of (indisc.). So I'm asking the Court
10 grant me a two-week extension, please.

11 I'm also asking (indisc.) order that Westar and the
12 Noorani parties follow through with the plan, close on the
13 transactions of lot seven and lot nine, and get this -- and get
14 these behind me so I can move forward with my development, sir.
15 Thank you.

16 **THE COURT:** So you say that you need two weeks on the
17 hundred thousand dollars. So that's --

18 **MR. DIXON:** I just (indisc.) sir.

19 **THE COURT:** Okay. You're saying by January 31.

20 **MR. DIXON:** Yes, sir.

21 **THE COURT:** And what about conveyance of lot seven to
22 Westar?

23 **MR. DIXON:** I'm ready to close today, sir. I'm
24 waiting on the (indisc.) release from our lender, Legalist,
25 (indisc.) from my understanding is being overnighted to title

1 company today. And I am prepared to close.

2 I am going to sign a deed today and send it to Don
3 (indisc.) for recording. So we can hold it in escrow when we
4 get our documentation (indisc.) once we get the release from
5 Legalist.

6 I (indisc.) recording the deed right now today if
7 that's what they want me to do. I will walk down (indisc.)
8 record the deed for lot seven right now and just pay (indisc.)
9 once I get (indisc.) maybe less than a day or so I can deliver
10 that to Mr. Nevarez.

11 But I will close on lot seven and I will close on lot
12 nine today if I can.

13 **THE COURT:** And what about the Home Tax release?

14 **MR. DIXON:** (Indisc.) Home Tax release for lot nine
15 and ten. I have requested (indisc.) for the lot seven release
16 and have not received it. I know what (indisc.) going to be.
17 It's going to be about \$36,000, which (indisc.) wire to
18 Mr. Comos (phonetic) at Chicago Title today as well, along with
19 \$36,000 for lot nine, and have that (indisc.) for that today.
20 I'm prepared to do that.

21 I can tell you that the stall on (indisc.) these
22 transactions closed is not from our side. I can promise you it
23 is in our best interest to get these guys -- get these
24 transactions closed and get these things behind us.

25 **(Pause from 11:35 a.m. to 11:36 a.m.)**

1 **THE COURT:** So -- and so I'm going to direct this
2 question to you, Mr. Carruth. So why shouldn't I grant both of
3 these motions and put these timeframes in the orders to enforce
4 the plan as opposed to resetting them?

5 **MR. CARRUTH:** Well, I -- well, I think we have an
6 agreement with Mr. Noorani to -- the Noorani group to delay the
7 hearing on that. And so that -- in case we can't get the
8 technicalities worked out with respect to the parking (indisc.)
9 boundary situation that were not on a deadline. I believe as
10 Mr. Dixon indicated, we can convey lot seven imminently.

11 I'm not sure -- I don't remember exactly, I think
12 there was a (indisc.) timing in Mr. Nevarez's motion.

13 You know, I think I will ask for, like I said, seven
14 to ten days just to be safe. But I'm -- I don't want to
15 contradict my client. I'm just (indisc.) flexibility.

16 **THE COURT:** Well, let me say this. I mean, I don't
17 know everything that's going on. I mean, you know, what I know
18 is what the documents say, okay, (indisc.) filed, the
19 agreements (indisc.) plan says.

20 And I don't view either one of these motions to
21 enforce the plan as being like premature or something. I mean,
22 (indisc.) way past the date for performance, you know.

23 And I'm sorry to hear, you know, someone filed a
24 motion to enforce the plan, that that kind of messed something
25 up in some other area. But, you know, in my mind, Westar and

1 Noorani were patient waiting until whatever, December whatever
2 it was, to file a motion to enforce the plan.

3 I mean, obviously I was patient because I didn't set
4 it the other day (indisc.) whatever, three weeks later. And I
5 know we've had holidays in the middle and I know we've got a
6 COVID surge. And I'm not -- you know, I'm not (indisc.) those
7 things.

8 But you promise something, you put it in writing, and
9 you get it -- a planned confirmed, you know, based on it and,
10 you know, parties are entitled to expect performance.

11 Mr. Nevarez, what do you propose?

12 **MR. NEVAREZ:** Yes, Your Honor. I think you -- I'd
13 like to break it up into two discussions.

14 First, to lot seven, that should be pretty simple.
15 The reorganized Debtor raises issues regarding Home Tax and
16 Legalist and title insurance companies and releases and
17 payoffs. That has nothing to do with conveyance of the lot
18 seven. It's a simple preparation of a two-page deed with an
19 exhibit (indisc.) presented (indisc.) confirmation proceeding.

20 All we want is the warranty deed with the proper
21 meets and bounds. That shouldn't take more than three days.

22 Whatever issues the Debtor has regarding Home Tax,
23 Legalist, the title company, or anybody else has nothing to do
24 and should not affect the conveyance. We want the conveyance
25 within three days (indisc.) --

1 **THE COURT:** I'm sorry, you don't want him to pay off
2 the liens on the lot first?

3 **MR. NEVAREZ:** It doesn't matter. If they don't pay
4 off the liens, we can always file an action to clear title and
5 enforce the payment of the liens by the Debtor. But what we
6 want -- what we do want is the deed so that we can begin to
7 make preparations for construction for lending.

8 So we're totally agreeable to getting a warranty
9 deed. And if there are liens on the property affecting the lot
10 seven, then those can be released after. It doesn't matter.
11 It does not affect our -- what we can do.

12 What is affecting what we can do is (indisc.) getting
13 title to the lot seven.

14 **MR. SPEAKER:** Okay.

15 **MR. NEVAREZ:** (Indisc.)

16 **THE COURT:** Let's just -- let's talk about that for a
17 minute. I mean, the deal is -- if I'm wrong then, Mr. Carruth,
18 you or Mr. Dixon correct me, but the conveyance of these lots,
19 the lot to Westar, as well as the lot to Noorani for that
20 matter, I mean, that's to be free and clear of liens and the
21 Debtor's supposed to pay the liens, right? Have I got that
22 wrong?

23 **MR. CARRUTH:** No, Your Honor. That statement is
24 correct.

25 **MR. DIXON:** That's correct.

1 **THE COURT:** Okay.

2 **MR. CARRUTH:** But if we need -- you know, if we need
3 to give the deed to lot seven now and then, you know, continue
4 to aggressively pursue the remaining pieces for a closing, a
5 full and final closing, or and -- or, in other words, the
6 release of the liens as specified in the plan, I mean, I think
7 that's a logical sequence.

8 And we can fulfill the conveyance of lot seven, as
9 Mr. Dixon and Mr. Nevarez both said. We -- you know, that --
10 we can do that pretty quick.

11 **THE COURT:** And is the -- is not the form of warranty
12 deed, is that not -- has that not already been negotiated? Was
13 that not -- was that a plan document? For some reason I have
14 that in my head. Maybe I have another case in mind. I don't
15 remember.

16 **MR. CARRUTH:** I seem to recall we had a proposed form
17 of deed. I don't know -- that was an exhibit as a proposed
18 form of deed. But so -- but, yes, I mean, the deed is ready or
19 (indisc.) --

20 **MR. SPEAKER:** Your Honor, the --

21 **THE COURT:** And the legal description is done, right?
22 Because you have meets and bounds particularly on lot seven,
23 right? That was kind of a few months ago, right?

24 **MR. CARRUTH:** Yes, Your Honor. I -- there may be
25 some technical corrections to the final meets and bounds but,

1 yes, there is a legal description for lot seven.

2 **THE COURT:** All right. I'm sorry, Mr. Nevarez, what
3 did you want to say?

4 **MR. NEVAREZ:** Yes. The plan (indisc.) the plan with
5 the order allowing TGV to enforce the subscription agreement
6 makes reference to -- as to who is to prepare the deed. It --
7 the plan does state and the order as well enforcing the
8 assumption (indisc.) that it is TGV's responsibility to convey
9 immediately, I should point out (indisc.) ago. That was
10 October 5th, 2021.

11 So if -- I mean, I'm willing to prepare the warranty
12 deed. I do those all the time. It takes me (indisc.) an hour
13 at the most.

14 **MR. SPEAKER:** (Indisc.)

15 **THE COURT:** Well, most warranty deeds have in it that
16 it's free and clear of liens, right? Am I (indisc.) --

17 **MR. SPEAKER:** (Indisc.)

18 **MR. CARRUTH:** (Indisc.) yeah, I mean that's -- yes,
19 Your Honor, that would be another issue.

20 But -- and I -- but I guess in order to meet
21 Mr. Nevarez's request, we could craft a form of deed that would
22 convey the property in -- convey the property imminently, and
23 then as necessary record a subsequent deed once the (indisc.)
24 in the next few days, several days, as the remaining liens are
25 cleared. But we're -- you know, we'll do what we need to do to

1 fulfill the conveyance request that has been made, the
2 immediate conveyance request.

3 **(Pause)**

4 **THE COURT:** Well, I want to -- I don't want to get
5 into a bunch of arguments about form of the deed. And I don't
6 want to get in a bunch of arguments about, well, we have a deed
7 but now you haven't cleared the liens off it, you haven't paid
8 off the liens.

9 **MR. CARRUTH:** Understood, Your Honor.

10 **THE COURT:** (Indisc.) how I generally understand it,
11 okay, generally understand it, the liens would be Home Tax,
12 whatever the release price was, Legalist, whatever the release
13 price was, and property taxes (indisc.).

14 **MR. CARRUTH:** Correct. And I'm looking -- I'm simply
15 looking for the deed that we have been working with.

16 **(Pause)**

17 **MR. SPEAKER:** Jeff, I've got the copy of the deed
18 here that we typed up and prepared on Monday for Westar.

19 **(Pause)**

20 **MR. CARRUTH:** You want to -- can you email that to me
21 real fast, please?

22 **MR. SPEAKER:** (Indisc.)

23 **MR. CARRUTH:** Okay. I've got --

24 **MR. SPEAKER:** There, I've got the one that's marked
25 (indisc.).

1 **(Pause)**

2 **THE COURT:** Okay. So this is Judge Mott. So let me
3 ask this question. I'm directing this to Mr. Carruth or
4 Mr. Dixon. So if I require you to provide the deed to Westar
5 let's say within three days -- we'll just pick a date instead
6 of have it run off entry of an order but -- well, I would only
7 be comfortable doing this if the order also said and then
8 you'll clean off all the liens on the property by whatever date
9 because I don't want to have some -- I'll say give
10 Mr. Nevarez's client a deed to some property has some liens and
11 then we go, you know, who knows how long to get the lien
12 scraped.

13 **MR. CARRUTH:** Yes, Your Honor. And looking back at
14 the form of deed that I believe we've been working from, it
15 guarantees title. But the deed instrument itself does not
16 require free and clear conveyance. It does not specify that.

17 **THE COURT:** Right. But that's the deal.

18 **MR. CARRUTH:** Oh, yes, absolutely, absolutely.

19 **THE COURT:** So how -- what's the -- by when can the
20 any liens be paid off on lot seven?

21 **MR. CARRUTH:** The -- I guess I would ask Mr. Dixon
22 just to confirm timing of funds.

23 **MR. DIXON:** I -- the funds are available. I think
24 it's more timing of receiving the -- for that matter, lot
25 nine's ready to go.

1 Lot seven, it's just (indisc.) the actual form
2 (indisc.) release from Home Tax Solutions, which last time when
3 we did this, the request took about (indisc.) it actually did
4 take (indisc.) exactly nine days to get this request in. So
5 we're on day six today so -- and I've been pinging them every
6 day. That's kind of where I'm at.

7 (Indisc.) I have the funds to close. It's not the
8 fact that we don't have the money to close (indisc.) to the
9 properties and then (indisc.) title policy (indisc.) for the
10 tax (indisc.) just trying to get (indisc.) from these guys.

11 **THE COURT:** All right. So this is Judge Mott. So
12 what's that date?

13 **MR. DIXON:** Just if we could have until the end of
14 the month, that's (indisc.) until the end of the month, I'm
15 fine with that.

16 **THE COURT:** All right. So, Mr. Nevarez, I'm going to
17 come back to you. On the hundred thousand dollars, if I order
18 that that be paid by January 31st, what does that sound like?

19 **MR. NEVAREZ:** Well, it doesn't sound great. I should
20 say that I'm not sure why there isn't money available. There
21 is (indisc.) transferred, and I think in my reply between the
22 Debtor, TGV, and its affiliates, its partners, and its
23 attorneys.

24 I would say that perhaps more the Court should order
25 the Debtor, TGV, cease all intercompany transfers and payments

1 to counsel to come up with that hundred thousand to ensure that
2 that hundred thousand is paid the end of the month.

3 There is all kinds of money being spent by TGV
4 Prestige that really seem to be more of a personal funding of
5 Mr. Dixon's personal matters. So there's a lot of money being
6 spent by TGV but it's not coming to us.

7 I'd like to see -- if we're going to wait until the
8 (indisc.) January, I'd like to see some measure being imposed
9 upon the Debtor ordering them to refrain from making all these
10 intercompany transfers and payments to attorneys to ensure that
11 we finally get the -- this paid out.

12 It's -- I should note that we're being labeled as
13 litigious and adversarial. The Debtor breached his
14 subscription agreement before any litigation. They breached it
15 under (indisc.) agreement in the State Court. They breached it
16 under the order here to enforce. They breached it under the
17 plan. I -- you know, I -- if we're litigious and adversarial,
18 there are good reasons for that.

19 And so I would suggest that it -- there needs to be
20 something more than just dates set forth because they're going
21 to breach those again. There's going to be more excuses and
22 we're going to be (indisc.) again.

23 So if we have to live with the 31st, that's fine for
24 the payment of the hundred thousand. I would request that some
25 sort of measure be imposed on the Debtor.

1 And as for the deed, I'd love to get that within
2 three days.

3 And, you know, we're not planning to sell the lot
4 seven so if it's encumbered until the 31st, that's fine, we
5 have no problem with that.

6 There's a -- you know, if we run into problems with
7 financing, we'll address that later if the releases haven't
8 been released and filed. So that's pretty much where I stand,
9 Your Honor.

10 **THE COURT:** Mr. Carruth, what do you think about
11 that?

12 **MR. CARRUTH:** Well, I think as an initial concept,
13 the hundred thousand dollars, I did go back and look in the
14 plan. There -- we did carry forth the previously discussed
15 enforcement mechanism from our versions of the plan to the --
16 through the final document.

17 And I apologize, I have since switched screens. But
18 there was a (indisc.) document and some other documents that
19 were supposed to arrive to enforce the hundred thousand
20 dollars, and we have not received those from Westar.

21 But and then just in response to the, you know, some
22 attorneys possibly (indisc.) being paid, namely me, that is a
23 priority claim. The hundred thousand dollars is an unsecured
24 claim.

25 But be that as it may, in order to move this process

1 along, I can agree that, you know, I will accept no money from
2 Gateway for my fees through the 31st until -- through the 31st.
3 And so if anybody gets (indisc.) before the 31st, it will not
4 be me on my final fee application.

5 So I think we can set the deadline for the 31st to
6 pay the hundred thousand dollars. I'll -- I won't accept any
7 money from Gateway in the meantime. I don't know, I'm not
8 aware of any other intercompany transfers necessarily. But I
9 think we can put that guardrail up as to anything that I might
10 be paid by Gateway before the 31st.

11 **THE COURT:** All right. Does anybody else want to be
12 heard on these motions? And then I'll tell you what we're
13 going to do.

14 **MR. FEUILLE:** Your Honor, this is James Feuille.
15 Just very briefly. I think Mr. Carruth mentioned since the
16 Noorani parties filed their motion to enforce, we've made
17 significant progress in getting this close to closing.

18 There is a complication just because the parties had
19 previously agreed to remove the Noorani parties from the
20 restrictive covenants of the element. And so we're -- but and
21 the same time agreed to certain parking access agreements.

22 All we're really working on now is getting that deal
23 finalized, that agreement. We're going to have a conference
24 call this afternoon. I think we can hammer it out. That is
25 why I suggested to Mr. Carruth we pass the hearing for a week.

1 But if the Court doesn't want to see us again, I can understand
2 that, and wants to enter an order. I think we can get it done
3 within a week.

4 And my clients would be happy to get it done and move
5 on and start their hotel development.

6 **(Pause)**

7 **THE COURT:** Well, Mr. Feuille, I appreciate your
8 attitude very much. I mean, if you want to reset your motion,
9 really the slot that I could give you is January 19, which is
10 not a week.

11 **MR. FEUILLE:** Your Honor, that would be fine with me.
12 Frankly, it would also be fine if you granted the order and
13 gave -- you know, gave the reorganized Debtor a set timeframe
14 to close. I think we're going to do it so I'm fine either way
15 Your Honor. I leave it to you.

16 I'm sorry, let me say this, Your Honor. If it was
17 set on the 19th, three days after that would be January 22nd.
18 And so perhaps -- and, Mr. Carruth could object to this or not
19 because we discussed passing the hearing.

20 But if you just want to order that it be closed and
21 transferred by January 21, I think that would be acceptable. I
22 can't speak for Mr. Carruth but I think that's enough time to
23 get it done rather than having a hearing on the 19th. Am I
24 making any sense, Your Honor?

25 **THE COURT:** No, I understand exactly what you're

1 saying. Mr. Carruth, go ahead.

2 **MR. CARRUTH:** I'm sorry. Gateway would be agreeable
3 with that also as to Noorani.

4 **THE COURT:** All right. So let's just deal with
5 Noorani. Then we're going to come back to Westar because I
6 don't know that I can stand too much more fun here.

7 But so let's look at Mr. Feuille's proposed order.
8 Well, it says within three days of the signing of this order.
9 So what if we excise that and put -- what was the day, January
10 21, 2022?

11 **MR. FEUILLE:** Yes, Your Honor.

12 **(Pause)**

13 **THE COURT:** All right. So why don't you make that
14 change, Mr. Feuille. On the first line of the order, put that
15 on today's date, which is January 13, 2022, we had a hearing on
16 it as opposed to just came for consideration.

17 **MR. FEUILLE:** Yes, Your Honor.

18 **THE COURT:** All right. So if you'll revise that and
19 upload, we'll get it signed. And then --

20 **MR. FEUILLE:** Yes, Your Honor.

21 **THE COURT:** -- Mr. Nevarez, so let's get your form of
22 order out. Let me know when you have your fingers on it.

23 **(Pause)**

24 **MR. NEVAREZ:** Sorry, Your Honor, I was mute. I have
25 it before me.

1 **THE COURT:** All right. So let's just start with the
2 first line. So let's say put on January 13, 2022 the Court
3 conducted a hearing on -- and then how you have it defined is
4 fine.

5 Then on the ordering provisions, the first ordering
6 provision put -- where it says lump sum payment of a hundred
7 thousand dollars, instead of within three days of signing, put
8 by January 31, 2022.

9 **MR. NEVAREZ:** Okay.

10 **THE COURT:** And then at the end of that paragraph put
11 reorganized Debtor shall make no payment on attorney's fees
12 until after January 31, 2022.

13 **MR. NEVAREZ:** Okay.

14 **THE COURT:** And if I'm going too fast just let me
15 know.

16 **MR. NEVAREZ:** No, I'm fine, Your Honor.

17 **THE COURT:** All right. So then on the second
18 ordering paragraph which deals with the deed, says and provide
19 that lot seven warranty deed duly notarized, instead of within
20 three days, let's just put a date in there.

21 I'm kind of inclined to make it January 18th just
22 because (indisc.) Friday and technically Mondays are a federal
23 holiday, not that it -- I just don't know (indisc.) --

24 **MR. NEVAREZ:** That's fine.

25 **THE COURT:** -- let's make it January 18, 2022.

1 **MR. NEVAREZ:** Okay. And then at the end of that
2 paragraph, think you need to add the following: and shall
3 cause all liens on lot seven to be paid by January 31, 2022.

4 **MR. NEVAREZ:** All right.

5 **MR. CARRUTH:** Your Honor, if I might --

6 **THE COURT:** (Indisc.) yes. Go ahead, Mr. Carruth.

7 **MR. CARRUTH:** Could we say paid and/or otherwise
8 released?

9 **THE COURT:** Yes. So, Mr. Nevarez, after "paid," put
10 paid or otherwise released.

11 **MR. NEVAREZ:** (Indisc.)

12 **THE COURT:** All right. Any other questions or
13 comments about that order, Mr. Carruth? Let's just start with
14 you.

15 **MR. CARRUTH:** No, Your Honor.

16 **THE COURT:** Mr. Nevarez, you have any questions about
17 those revisions?

18 **MR. NEVAREZ:** No, sir.

19 **THE COURT:** So let me just ask -- let me ask this
20 question. Maybe we should be specific about it in the order
21 but let's just talk about it so we don't have a dispute about
22 it.

23 So reorganized Debtor's going to (indisc.) this deed
24 to lot seven. Do you want that delivered to you, Mr. Nevarez,
25 or do you want it to be sent to the County Clerk by priority

1 mail or do you want -- how do you -- do you want them to
2 provide you the deed and then you get it recorded?

3 **MR. NEVAREZ:** No. I'm fine with Mr. Carruth sending
4 it to the County Clerk via priority mail, so long as I'm copied
5 and kept abreast.

6 **THE COURT:** Okay.

7 **MR. NEVAREZ:** (Indisc.)

8 **THE COURT:** As we -- I guess we've all -- you all
9 have experienced (indisc.) arriving at the County Clerk and
10 putting a stamp on it apparently takes a little bit of time
11 these days. And then even more so getting it where you
12 actually can see that it was recorded (indisc.) kind of saw
13 that exercise through the release of lis pendens and it just
14 took -- take some days there. And --

15 **MR. CARRUTH:** Your Honor, if I may?

16 **THE COURT:** Yes.

17 **MR. CARRUTH:** Thank you. I believe, and I've had
18 this discussion with Mr. Dixon, I would invite him to correct
19 me if I'm wrong, I believe we are -- our procedure would be we
20 would just walk it through since Mr. Dixon is downtown.

21 **THE COURT:** Is that doable, Mr. Dixon? You take it
22 down there in hand, by hand, can you -- will they actually
23 record it that day?

24 **MR. DIXON:** Yes, Your Honor. I can take it down
25 there and have it recorded within 30 seconds. It (indisc.)

1 have my -- I can actually make it down there and just walk up
2 to the counter and have it recorded (indisc.) recorded copy to
3 the parties. I can (indisc.) deed at that point to
4 Mr. Nevarez's office.

5 **THE COURT:** All right. Do we need to try to write
6 that in the order?

7 **MR. DIXON:** That'll be fine.

8 **MR. SPEAKER:** (Indisc.)

9 **THE COURT:** Mr. Nevarez, do you want that in the
10 order or just want to leave it like it is, which is by January
11 18, 2022?

12 **MR. NEVAREZ:** That's fine, Your Honor. I --

13 **THE COURT:** All right.

14 **MR. NEVAREZ:** -- (indisc.) as is.

15 **THE COURT:** Thank you. All right. So if you'd
16 revise that order and upload it, Mr. Nevarez, we'll get it
17 (indisc.).

18 **MR. NEVAREZ:** Very well.

19 **THE COURT:** All right. What else needs to be done
20 today in this case?

21 **MR. NEVAREZ:** I have (indisc.) --

22 **MR. SPEAKER:** (Indisc.)

23 **THE COURT:** (Indisc.) looks like we're done. I'll
24 look for the order from Mr. Feuille and one from Mr. Nevarez.
25 Thank you, gentlemen. Good luck. Court is adjourned.

(This proceeding was adjourned at 12:14 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



May 14, 2022

Signed

Dated

TONI HUDSON, TRANSCRIBER